

Serial No. 10/817,058

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Response

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Claims 1-46 are pending.

Claims 1, 2, 5-7, 17, 22, 24, 25, 27, 31-37, and 46 have been amended.

No new matter has been added with the amendments, which are intended to merely clarify language used in the claims and the subject matter claimed. The scope of the claims is intended to be the same after the amendment as it was before the amendment.

Priority

The Examiner erroneously indicated the filing date of the provisional application US 60/460,684 as "04-04-2004". The correct date is April 4, 2003.

Rejection of Claims under 35 USC § 112(2)

The Examiner rejected Claim 2 under Section 112(2) as indefinite. The Examiner stated as follows:

...The limitation of administering erythropoietin (EPO) to a patient renders this claim indefinite because administering EPO to any patient who is not suffering the effects of myocardial ischemia is subsequently not going to reduce the effects of this condition if this patient is not suffering from it.

Claim 2, which depends from Claim 1 (amended), now recites that the erythropoietin is administered to the patient to achieve a blood concentration of about 0.5-10 U/ml.

It is submitted that Claim 2 as amended satisfies the requirements of Section 112(2), and withdrawal of this rejection is respectfully requested.

Rejection of Claims under 35 USC §§ 102(a) (Calvillo)

The Examiner rejected Claims 1-2, 4, 6-16, 18, 24, 29-30, 32-33, 38-40, and 43-46 under Section 102(a) as anticipated by Calvillo et al. (PNAS 100(8): 4802-4806, published on-line March 27, 2003, 10.1073/pnas.0630444100).

Without addressing or making any admissions regarding Calvillo, Applicant hereby submits a Declaration under Section 131(b) swearing behind Calvillo et al. Applicant conceived and reduced to practice the presently claimed invention prior to the Calvillo publication date of March 27, 2003.

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Accordingly, withdrawal of this rejection of the claims is respectfully requested.

Rejection of Claims under 35 USC §§ 102(e) (Stamler)

The Examiner rejected Claims 1-8, 10-18, 24-31, and 46, and Claims 32-45 under Section 102(e) as anticipated by Stamler (US Publication 2004/0009908).

Without addressing or making any admissions regarding Stamler, Applicant hereby submits the enclosed Declaration under Section 131(b) swearing behind Stamler. Applicant conceived and reduced to practice the presently claimed invention prior to the Stamler filing date of July 10, 2002.

Accordingly, withdrawal of this rejection of the claims is respectfully requested.

Rejection of Claims under 35 USC §§ 102(b) (Cynshi)

The Examiner rejected Claims 32-45 under Section 102(b) as anticipated by Cynshi (USP 4,732,889). Insofar as this rejection is maintained with respect to the claims as amended, this rejection respectfully traversed.

The Examiner maintains that Cynshi discloses all of the elements of the rejected claims, citing to Examples 1-6 at cols. 6-8.

Cynshi does not teach or suggest Applicant's compositions as claimed in Claims 32-45.

Rather, Cynshi discloses a composition formulated with a "therapeutically effective amount" of EPO for treatment of anemia of rheumatoid arthritis.

Applicant's compositions as claimed are formulated with an effective amount of EPO such that administering the recited composition of EPO substantially immediately prevents or reduces myocardial ischemia within about 1-35 minutes of administration and without a substantial increase (e.g., *less than 10% increase*) in the patient's hemoglobin level, hematocrit level, or both.

The "therapeutically effective amount" of EPO for treatment of anemia does not translate to an effective amount to achieve a blood level in the patient within about 1-35 minutes of administration to substantially immediately prevent or reduce myocardial ischemia.

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Furthermore, as demonstrated by Cynshi in Experiments 2 and 3, Tables III and IV, administering the described composition caused the hematocrit and hemoglobin levels to increase by 12-24%.

Cynshi does not teach or suggest Applicant's compositions as claimed. Accordingly, withdrawal of this rejection of the claims is respectfully requested.

Rejection of Claims under 35 USC § 103(a) (Stamler with Brines)

The Examiner rejected Claims 19-23 as obvious over Stamler in view of Brines (US Publication 2003/0134798). Insofar as this rejection is maintained with respect to the claims as amended, this rejection is respectfully traversed.

First of all, Applicant has submitted herewith a Declaration under Section 131(b) swearing behind Stamler. Applicant conceived and reduced to practice the presently claimed invention prior to the Stamler filing date of July 10, 2002. Accordingly, Applicant will not address Stamler in the arguments presented herein.

The remaining reference, Brines, does not teach or suggest Applicant's method as recited in Claims 19-23. Brines describes perfusion and storage of cadaveric kidneys and pancreases for transplant.

Moreover, contrary to the Examiner's assertion, Brines does not teach or suggest treating a donor organ for up to 30 hours. Brines states as follows at [0069] (emphasis added):

...Using the solution, preservation may be extended beyond the 30-hour limit recommended for cadaveric kidney preservation.

Brines is describing extending the preservation time of a donor organ. Brines makes no disclosure of a duration for administering EPO to a donor organ.

Nothing in Brines teaches or suggests Applicant's method as claimed. Accordingly, withdrawal of this rejection of the claims is respectfully requested.

Extension of Term. The proceedings herein are for a patent application and the provisions of 37 CFR § 1.136 apply. Applicant believes that a one (1) month extension of term is required, and hereby requests such extension and authorizes the extension fee to be charged to

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Account No. 23-2053. If any additional extension and/or fee are required, please consider this a petition therefore and charge the required fee(s) to Account No. 23-2053.

It is submitted that the present claims are in condition for allowance, and notification to that effect is respectfully requested.

Respectfully submitted,

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Dated: March 3, 2005

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